

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CSX TRANSPORTATION, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 05-00338 (ESH)
	)	
ANTHONY A. WILLIAMS and	)	
DISTRICT OF COLUMBIA	)	
	)	
Defendants.	)	

**MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff CSX Transportation, Inc. (“CSXT” or “Plaintiff”) respectfully moves this Court for entry of a preliminary injunction pursuant to Federal Rule of Civil Procedure 65 and Local Civil Rule 65.1.

As set out more fully in the accompanying Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction (“Memorandum”) and supporting affidavits and exhibits, Plaintiff seeks a preliminary injunction, pending the Court’s final review on the merits, enjoining the implementation and enforcement of the recently enacted District of Columbia Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005 (the “District Act”) or any variation of that Act that seeks to prohibit in the longer term the transportation within the District of Columbia of materials that may lawfully be transported in interstate commerce in accordance with federal law and regulations.

The District Act (1) unreasonably burdens interstate commerce in materials vital to the nation’s health, welfare and economy and thus violates the Commerce Clause of the United States Constitution (Article I, § 8, cl. 3); (2) is preempted by the express

preemption provisions of three federal statutes—the Federal Railroad Safety Act, 49 U.S.C. § 20106, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5125 (a) and (b), and the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10501(b); and (3) was passed as an *ultra vires* act by the Council of the District of Columbia contrary to the limited delegation of legislative authority given by Congress under the Home Rule Act. A proposed order granting such preliminary injunctive relief accompanies this Motion.

As set out more fully in the accompanying Memorandum, CSXT will likely succeed on the merits of its claims, and the District Act causes immediate and irreparable injury to CSXT, its shippers and their customers. The District, in contrast, will not be harmed by the preliminary injunctive relief. And because compliance with the District Act would increase hazardous materials traffic through many other jurisdictions without consideration of their interests, the public interest will be served by such a preliminary injunction. *See Bradshaw v. Veneman*, 338 F. Supp. 2d 139, 141 (D.D.C. 2004). Accordingly, CSXT meets all of the requirements for issuance of a preliminary injunction.

Respectfully submitted,

Dated: February 22, 2005

\_\_\_\_\_  
/s/ Mary Gabrielle Sprague

Ellen M. Fitzsimmons  
Peter J. Shudtz  
Paul R. Hitchcock  
CSX TRANSPORTATION, INC.  
500 Water Street  
Jacksonville, FL 32202  
(904) 359-3100

Irvin B. Nathan (D.C. Bar No. 090449)  
Mary Gabrielle Sprague (D.C. Bar No. 431763)  
Kathryn E. Taylor (D.C. Bar No. 486564)  
ARNOLD & PORTER LLP  
555 Twelfth Street, N.W.  
Washington, D.C. 20004-1206  
(202) 942-5000  
(202) 942-5999 (facsimile)

*Attorneys for Plaintiff CSX Transportation, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2005, copies of the Motion for Preliminary Injunction and Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction were served electronically by the U.S. District Court for the District of Columbia Electronic Document Filing System (ECF), on the following:

Robert C. Utiger, Esq.  
Richard S. Love, Esq.  
Andrew J. Saindon, Esq.  
Office of the Attorney General for the District of Columbia  
441 Fourth Street, N.W., 6<sup>th</sup> Floor South  
Washington, D.C. 20001

\_\_\_\_\_  
/s/ Kathryn E. Taylor  
Kathryn E. Taylor